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# ADMINISTRATIVE CODE COMMITTEE

## A Report to the 51st Legislature

### December 1988

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*Montana Legislative Council*

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CODE COMMITTEE

A REPORT TO THE 51ST LEGISLATURE

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MEMBERSHIP  
ADMINISTRATIVE CODE COMMITTEE

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John MacMaster	Staff Attorney
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(Outline of ACC Staff Seminar)



## PART I

### HISTORY, FUNCTION, AND ACTIVITIES OF THE ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee, a permanent joint committee of the Montana Legislature, was established in 1975 by Title 5, chapter 14, part 1, MCA. The Committee consists of four members from the House and four members from the Senate. These members are appointed in the same manner as are standing committees of their respective houses of the Legislature. The chairman of the Committee is selected by the Committee members. During the biennium covered by this report, the staff of the Committee consisted of one staff attorney, employed by the Legislative Council, who devoted approximately one-fourth of his time to Committee business. Six other staff lawyers employed by the Council also provided services to the Committee on a part-time basis. They reviewed rules of administrative agencies. A Committee secretary performed clerical tasks. Committee meetings were held as often as necessary.

The purpose of the Committee, as reflected in the statutes defining its powers and duties, is to review rules proposed and adopted by administrative agencies and filed with the Office of the Secretary of State under the provisions of the Montana Administrative Procedure Act (MAPA) and to generally oversee compliance with the requirements of MAPA. Although this authority includes the ability to oversee compliance with those parts of Title 2, chapter 4, MCA, concerning contested case procedure and judicial review of contested cases, the largest amount of the Committee's time over the biennium has been devoted to

aspects of the rulemaking process itself. The Committee believes this emphasis is appropriate; contested case procedures are somewhat beyond the authority of the Committee (with the exception of recommended amendments to statutes). Therefore, the Committee intends to serve: (1) as a body to provide routine review of executive agency rules; and (2) as a forum to which persons with complaints concerning executive branch rules and executive agency action founded on those rules may turn for less expensive and more timely solutions than legal challenges to agency authority. For this reason, the Committee has sought to publicize its functions in the Montana Administrative Register (MAR), rulemaking hearings, and other forums.

It cannot be too strongly emphasized that MAPA does not grant substantive rulemaking authority to any agency.

Since publication of the Committee's Biennial Report to the 50th Legislature in December of 1986, the Committee has held five meetings to review rule proposal and adoption notices published in the MAR, consider problems with the application of rules, hear testimony, and conduct studies on specific topics. A schedule of Committee meetings and a summary of the matters discussed follow:

April 21, 1987, meeting

Election of Committee Chairman and Vice-Chairman; request Department of Commerce to appear at next meeting and explain scale pit rules, possible problems with them, and how to handle the problems; request Board of Realty Regulation to appear at next meeting

and explain its new rule regulating compensation of realtors; request Department of Institutions to appear at next meeting and explain its proposed amendment relating to criteria for admission to the Montana Center for the Aged in Lewistown; Committee budget and tentative meeting schedule for the coming interim; 1986 MAR Issues 19 through 24 and 1987 MAR Issues 1 through 6.

June 26, 1987, meeting

See subjects at April 21, 1987, meeting, referred to above; State Lottery Commission rule requiring winners to allow their names and pictures to be used for promotional purposes; DNRC request that Committee withdraw its objection to a water reservation rule; Department of Revenue greenbelt appraisal law interpretation; criteria for selection of applicants for certain public projects; Board of Optometrists rule prohibiting offices in certain places; 1987 MAR Issues 7 and 8.

October 2, 1987, meeting

Department of Labor and Industry requirement that a party must have the consent of the mediator to bring witnesses to a workers' compensation dispute mediation conference; DNRC water reservation rule relating to water-use efficiencies associated with diversionary uses; internal operations and rules of Board of Cosmetologists, and board processes and procedures; rules relating to used keno machines; Board of Optometrists rule prohibiting offices in certain places; 1987 MAR Issues 9 through 16.

January 29, 1988, meeting

Fees for ARM and MAR and deficiencies in proposal to change the fees; untimely reimbursements to medical care providers by state workers' compensation insurance fund; Centennial Commission's rulemaking authority and rules setting fees and royalties for use of the official centennial logo; denial of an application to take the examination for a master plumber's license; various objections to proposed Board of Chiropractors rules; rules relating to licensure of nursing home administrators; 1987 MAR Issues 17 through 24.

July 18, 1988, meeting

Definition of preschool for purposes of law exempting preschools from the law regulating day-care centers; rule allowing acceptance of unsigned bid for sales to the state; new set of rules of Board of Outfitters and Guides; state workers' compensation fund classification and rate changes; 1988 MAR Issues 1 through 10.



## PART II

### THE NEED FOR THE MONTANA ADMINISTRATIVE PROCEDURE ACT AND LEGISLATIVE OVERSIGHT OF ADMINISTRATIVE RULEMAKING

In Montana, as in most states, the state constitution provides that the lawmaking function is a function of the Legislature and declares that certain procedures must be used in order to enact laws.<sup>1</sup> Historically, it is also a recognized principle of state law that the Legislature may delegate the power to enact rules to the executive branch, comprised of agencies that are themselves usually created by the Legislature.<sup>2</sup> This delegation of legislative authority to enact rules that are binding as law has its support not only in law but also in reason; the Legislature, being a part-time body and lacking expertise in the many varied purposes of state government, does not have the time, knowledge, and resources to adopt as statutory law the many detailed provisions of the law that are needed to implement the statutes the Legislature enacts. To facilitate the administration of legislation, the Legislature authorizes rules that must be adopted pursuant to the requirements of the Montana Administrative Procedure Act.

Because of the definition of "agency" contained in MAPA, MAPA applies to most state agencies.<sup>3</sup> By its application, it has standardized many functions of administrative agencies, the most important of which may be the rulemaking function delegated by the Legislature. As a result, persons dealing with state agencies need not obtain information concerning rulemaking and copies of agency rules solely from the

agencies themselves, nor must they distinguish between many different forms and styles of agency regulations. Furthermore, there is no longer a risk that an agency may have adopted rules in a manner unknown and undiscoverable by the general public. Under MAPA, all proposed and adopted rules of every agency covered by MAPA must be printed in the Montana Administrative Register, which is published twice monthly by the Secretary of State; interested persons must be given an opportunity to comment on proposed rules; and adopted rules must be published in the Administrative Rules of Montana. Much good has resulted from these and other provisions of MAPA. The purpose and effect of MAPA, however, have sometimes been misconstrued. As the Administrative Code Committee noted in an earlier report to the Legislature,<sup>4</sup> MAPA itself has sometimes been blamed for the proliferation of agency rules, and its repeal has sometimes been advocated as the cure to prevent the adoption of those rules. But as the Committee also noted in that previous report,<sup>5</sup> MAPA does not grant rulemaking authority to state agencies, as a section of MAPA plainly states.<sup>6</sup> Rulemaking authority has instead been granted by the Legislature in individual sections of the law scattered throughout the Montana Code Annotated. A typical grant of rulemaking authority, section 37-32-201, MCA, states, with respect to the Board of Cosmetologists:

37-32-201. Rulemaking power. (1) The board may adopt rules in accordance with the Montana Administrative Procedure Act to implement this chapter and to properly regulate this profession.

The number of grants of rulemaking authority may surprise some people. Twelve years ago, the Committee



report listed almost 350 statutory sections delegating authority for agencies to adopt administrative rules and noted that the total number of statutory sections granting rulemaking authority was probably even higher.<sup>7</sup> As the 1976 Committee report also found, the grants of rulemaking authority that are enacted by the Legislature are often worded in such a manner as to provide little detail and guidance to executive agencies on the manner in which rulemaking authority is to be exercised.<sup>8</sup> While this concern has been the subject of Committee reports that contain findings, cautionary remarks, and recommended legislation to the Legislature, it is worth noting that rulemaking grants must of necessity continue to be enacted. By way of a solution to the problem of loosely worded and hastily considered delegations of rulemaking authority, the 1976 Committee report recommended and the 45th Legislature enacted a law requiring the Legislature to provide in its joint rules a procedure for the adoption of a statement of legislative intent whenever rulemaking authority is delegated.<sup>9</sup> Chapter 11 of the Joint Rules of the Legislature and the resulting statements of legislative intent have been successfully used by the Committee and its staff in guiding the agency rulemaking process. (The rules may be amended at the 1989 legislative session, including the chapter numbers and content.)

Since its creation in 1975, the Committee has sponsored other legislation to help the Legislature exert more influence over the rulemaking process.

Statements of legislative intent, hearings on agency rules, and similar "mechanical" devices, while certainly helpful, cannot be relied upon in all

instances to assure a legal implementation of legislative intent by the agency, much less the "best", most practical, or least expensive implementation of legislative intent. Whether because of oversight, inaccurate use of language, limited time allowed for legislative or committee action, or simple inability to foresee possible legal or economic consequences, it is almost impossible as a practical matter to frame grants of rulemaking authority and the statutes implemented by them in a manner acceptable to all interests. Hindsight must therefore be used, and legislative oversight becomes a practical necessity.

## PART III

### REVIEW OF AGENCY RULES

The Administrative Code Committee is required by section 2-4-402, MCA, to review "all proposed rules filed with the secretary of state". The review of rules by the Committee is conducted primarily to determine compliance with statutory requisites for valid rules. Under section 2-4-305, MCA, no rule is effective unless:

- (1) each substantive rule adopted is within the scope of authority conferred by the Legislature and in accordance with other statutory standards;
- (2) the rule is consistent with the implemented statute and is reasonably necessary to carry out the purpose of the statute; and
- (3) the rule substantially complies with the requirements of the law relating to the procedure for adoption (e.g., notice, hearing, and submission of comments on the rule).

To determine whether a rule complies with these statutory standards, the Committee reviews the statute authorizing rulemaking, the substantive law implemented by the rule, and the procedure used by the agency to propose or adopt the rule. The Committee reviews the rule for such additional considerations as clarity and economic impact.

The review begins with a staff attorney analyzing the rule for substantive and procedural compliance with the statutes. If an error in any proposed or adopted rule is discovered, the reviewing attorney notifies the agency concerned and recommends a solution. If the agency agrees with the staff comments and agrees to implement the proposed remedy, the staff objection and agency response are noted in a written summary of current rules that is distributed to the Committee. The staff attorney conducts a followup as necessary to determine subsequent agency compliance. If the agency disagrees with the staff comment or proposed solution and the staff objection is of a substantive nature, the problem is explained both in the attorney's summary and orally before the Committee at its next meeting. The agency is given an opportunity to present its views. The Committee then may act on the matter by vote or Committee consensus.

If the agency was not represented at the meeting, it is notified of the Committee's recommendation, request, or objection. Followup is then conducted as necessary by the Committee staff to determine agency compliance.

Objections generally fall into three major categories:

- (1) The agency lacks statutory authority for the proposed rule; the rule improperly interprets the language of the statute being implemented; the rule is unnecessary to give effect to the statute implemented; or the rule has not been adopted in substantial compliance with the procedural requirements of the Montana Administrative Procedure Act.

- (2) A second category of objections raised by the staff relates to such matters as any improper citation to the authorizing statute or the statute implemented (although both types of statutes may in fact exist), improper repetition of statutory language in rules, and ambiguous language. Objections of this type raised by the staff are brought to the Committee's attention if the agency disagrees with the objection or recommendation of the staff, depending upon the severity of the violation and the nature of the agency response.
- (3) A third category includes such matters as grammatical, spelling, and typing errors, which are usually brought to the attention of the agency so that they may be corrected. They are rarely brought to the attention of the Committee.

In the great majority of cases in which staff objections were raised to rulemaking errors, the agencies agreed and remedied the staff objection by: (1) canceling the rulemaking proceeding altogether; (2) canceling the rulemaking proceeding and rule objected to and renoticing the rule in a different form; (3) amending the proposed rule in the subsequent notice of adoption; or (4) correcting minor errors in the ARM replacement pages. In most cases of Committee objections, the agencies involved responded positively to the Committee objection.

During the past biennium, the staff attorneys' combined time spent reviewing rules was approximately 20 hours each week.



## END NOTES

<sup>1</sup> Article V, §1, Montana Constitution; Article V, §11, Montana Constitution.

<sup>2</sup> See, for example, Chicago, M & St. P. Ry Co. v. Bd. of RR Comm'rs., 76 Mont. 305, 247 P. 162 (1926).

<sup>3</sup> Sections 2-3-102 and 2-4-102(2), MCA; certain exceptions exist, such as the Governor and the Board of Regents.

<sup>4</sup> Report of the Administrative Code Committee to the 45th Montana Legislature (December 1976), p. 5.

<sup>5</sup> The 1976 Report of the Administrative Code Committee to the 45th Legislature reads in part:

... the committee has noted a widespread misunderstanding that the APA is the cause of rules. To clear up any confusion on this issue, the committee has proposed language from the California statutes declaring that the APA can never be used as authority to adopt a substantive rule, and that rule [sic] adopted under authority of another statute must be reasonably necessary to effectuate the purpose of that other statute.

<sup>6</sup> Section 2-4-301, MCA, now provides as follows:

Except as provided in part 2 [which applies only to organizational and procedural rules], nothing in this chapter confers authority upon or augments the authority of any state agency to adopt, administer, or enforce any rule.

<sup>7</sup> Report of the Administrative Code Committee to the 45th Montana Legislature (December 1976), pp. 5-7.

<sup>8</sup> Ibid., p. 9.

<sup>9</sup> Section 5-4-404, MCA.

APPENDIX A

MEMORANDUM ON COMMITTEE'S POWERS





# ADMINISTRATIVE CODE COMMITTEE'S POWERS

Prepared for the Administrative Code Committee

By John MacMaster  
Staff Attorney

Montana Legislative Council  
October 1986

This legal memo was prepared at the request of Representative Gary Spaeth, Chairman of the Administrative Code Committee. It sets forth the various powers of the Committee under the Montana Administrative Procedure Act (MAPA). The Committee may:

- (1) review the incidence and conduct of administrative proceedings under MAPA; 2-4-402(3)(e), MCA;
- (2) review all proposed rules, though Department of Revenue proposals may only be reviewed for procedural compliance with MAPA; 2-4-402(1) and (2), MCA;
- (3) require an agency proposing a rule to hold a hearing on the rule; 2-4-402(3)(c), MCA;
- (4) submit oral and written testimony at an agency's rulemaking hearing; 2-4-402(3)(b), MCA;
- (5) require an agency to publish the full or partial text of rule material adopted and incorporated by reference to the material; 2-4-307(4), MCA;
- (6) obtain an agency's rulemaking records for the purpose of reviewing compliance with 2-4-305, MCA; 2-4-402(3)(a), MCA;

(7) require an agency to prepare an economic impact statement regarding a rule proposal. As an alternative, the Committee may by contract prepare its own statement. Notice of the statement and of where a copy can be obtained is published in the Montana Administrative Register; 2-4-405, MCA;

(8) petition an agency for the adoption, amendment, or repeal of a rule; 2-4-315, MCA;

(9) make a written recommendation to an agency for the adoption, amendment, or repeal of a rule; 2-4-402(3)(b), MCA;

(10) make a written objection to an agency regarding a proposed or adopted rule. The agency must respond in writing. If the Committee does not then withdraw or substantially modify its objection the Committee may require publication of the objection next to the rule in both the Montana Administrative Register and the Administrative Rules of Montana; 2-4-404, MCA;

(11) poll the Legislature to determine whether a proposed rule is consistent with the Legislature's intent; 2-4-403, MCA. See also 2-4-404, MCA;

(12) make a recommendation to the Legislature regarding an agency's grant of rulemaking authority. For example, the Committee could recommend that the statute granting rulemaking authority be amended or repealed; 2-4-314, MCA;

(13) petition an agency for a declaratory ruling on the applicability of an agency rule. The ruling is subject to judicial review, including review at the Committee's request; 2-4-501, MCA;

(14) seek judicial review of an emergency rule;  
2-4-303, MCA;

(15) institute, intervene in, or otherwise participate in proceedings involving MAPA (including an action to change or repeal a rule) in the state and federal courts and administrative agencies;  
2-4-402(3)(d), MCA;

(16) require an agency to give the Committee copies of documents filed in a proceeding involving the interpretation of MAPA or an agency rule; 2-4-410, MCA; and

(17) require an agency to review its rules biennially to determine if rules should be adopted, amended, or repealed; 2-4-314(1), MCA. That section requires each agency to do this. The Committee can use various powers set forth in this legal memo, paragraph (16) for example, to force an agency to carry out the review.

In addition to the above powers under MAPA, the Committee may remind an agency that the Legislature holds the power of the purse and may not look favorably upon an agency in the next regular session if the agency exceeds its rulemaking authority or plays fast and loose with either that authority or the legislative intent behind a statute. The Committee may also, under its inherent powers as a legislative committee, draft and introduce legislation relating to MAPA; an agency's grant of rulemaking authority; adoption, amendment, or repeal of a rule; or other matters relating to rulemaking.



APPENDIX B

ADMINISTRATIVE RULES -- MAPA REQUIREMENTS  
(Outline of ACC Staff Seminar)



(The following is the outline for a seminar periodically given by the ACC staff since June of 1987 to executive branch personnel.)

ADMINISTRATIVE RULES -- MAPA REQUIREMENTS  
(June 2, 1987)

Prefatory remarks: the Administrative Code Committee, its staff, and their functions. Rules are not reviewed by the Legislative Council. They are reviewed by the Administrative Code Committee.

Background reading; handouts

- Read, study, and periodically reread Title 2, ch. 4, parts 1 through 4, MCA, and the annotations to these parts.
- Chapters 2 and 3 of the Legislative Council's Bill Drafting Manual can be consulted on grammar, punctuation, capitalization, and other matters of style and English usage. Photocopies of these chapters can be distributed to those working with rules.
- Memo from David Niss to "Lawyers" regarding "Updated Procedure and Format Memo for Review of Administrative Rules", dated May 7, 1984. Read and periodically reread. Use as a reference source.
- Memo from John MacMaster to "Attorneys" regarding citing extensions of rulemaking authority, dated May 30, 1986. Read and periodically reread. Use as a reference source.
- Attorney General's Model Rules. See Title 1 of the ARM.

## Definition of administrative rule

See 2-4-102(10).

## Legislative delegation of rulemaking authority

- In addition to passing laws, the Legislature has the authority to delegate to the executive branch agencies the authority to adopt laws as administrative rules.
- The following are reasons why a delegation of rulemaking authority may be necessary or desirable:
  - > There is a lack of expertise in the Legislature.
  - > The administrative agency that will administer a statute and implement it by rules has an abundance of expertise and has much more expertise than the Legislature; it is better for the agency to adopt rules than for the Legislature to attempt to completely cover the area of law by statute.
  - > The field of law involved is too complex, too broad, or too narrow and obscure.
  - > There is a necessity for ongoing compliance with federal law that the state must follow in order to get federal funds.



- > The field of law does not easily lend itself to regulation completely by statute.
- > The field of law is a fast-moving one, the law must be constantly updated, and the Legislature does not meet often enough to do the updating itself.
- > The legislative process results in a bill granting rulemaking authority because the Legislature does not have the time, or the inclination, to completely flesh out a concept, or a compromise results in a vague or incomplete law.

#### MAPA does not grant authority for substantive rules

- See 2-4-301. Section 2-4-201 grants authority only for the types of rules mentioned in that section. It does not grant authority for substantive rules. See 2-4-102(11) for definition of substantive rules.

#### Key sections for rulemakers

- Persons formulating, writing, and filing rule proposal and adoption notices should pay particular attention to 2-4-302, 2-4-303, 2-4-305 through 2-4-307, and the annotations to these sections.

### Statutory authority for rules

- Under 2-4-305(3), each new rule or amendment of a rule must cite the MCA section that is authority for the rule. You cannot adopt rules unless an MCA section clearly grants authority to adopt rules and the rules implement a particular MCA section or sections.
- The cited authority must grant authority to implement, by rule, the MCA section(s) the rule cites as implemented. That is, the authority section must say "shall (or may) adopt rules to implement this part (chapter) (title) (sections\_\_\_\_through\_\_\_\_)". The authority section may also state specific subjects that may be implemented by rule.

### Extensions of rulemaking authority

- See 2-4-305(3) and 5-4-402. An extension of rulemaking authority is a section in a session law that extends the rulemaking authority in an already existing MCA section (a section in existence when the session law is drafted) to one or more sections enacted or amended by that session law.
- If an MCA section was enacted or amended in any legislative session after October 1, 1983, and at the time of the enactment or amendment there was a then-existing MCA section granting authority to implement the new or amended section by rule, the session law that enacted or amended the MCA

section has to have an extension of rulemaking authority section in it or a rule cannot be adopted or amended implementing the MCA section. The extension(s) of rulemaking authority must be included in the citation of authority for the rule. The session laws must be checked to see whether extensions of rulemaking authority have been granted. This does not apply to an enacting or amending session law that itself contains a grant of authority to adopt rules implementing other sections in that session law.

- Read and study the memo on extensions of rulemaking authority referred to in the above section entitled "Background reading; handouts". You will find that the memo will become more clear the more times you read it. Get together with other persons working on rules and read, study, and discuss the memo together.

#### Implementation of MCA sections

- Each new rule or amendment of a rule must cite the section(s) of the MCA that the rule implements. You cannot have a rule unless it (properly and in fact) implements one or more MCA sections.
- "Implement" a section means to flesh it out, explain it, further or fulfill its purpose, make it work or work better, interpret it, carry it into effect, etc. The whole purpose of administrative rules is to do one or more of the above. A rule that is not in some such way connected to at least one MCA section is invalid.

You cannot have a rule that has nothing to do with implementing statutory law.

#### Consistency with MCA; conflicts

- Each rule must be consistent with, and not in conflict with, the MCA section(s) it implements and all other statutory and constitutional law, including applicable federal law. See 2-4-305(6)(a). A rule can never override a provision of a statute or constitution.
- A provision or additional requirement not envisioned by the Legislature must not be adopted by rule. See the 2-4-305 annotations case notes from the following cases: McPhail v. Mont. Bd. of Psychologists, Bd. of Barbers v. Big Sky College of Barber-Styling, Michels v. Dept. of Social and Rehabilitation Services, Bell v. St.

#### Statements of reasonable necessity for rules

- Section 2-4-302(1) requires a rule proposal notice to include a rationale for the intended action. Under 2-4-305(6)(b), the proposal notice must contain a statement explaining why a new rule or a rule amendment is reasonably necessary to implement the purpose of the implemented MCA section(s).
- Reasonable necessity and rationale are similar, but the former includes the latter and is a stiffer test to meet. If you adequately show

reasonable necessity, you have an adequate rationale.

- The rule must be necessary to implement the statute, and the necessity must be reasonable. State as explicitly and clearly as you can why the rule is needed. Do not be afraid to be lengthy. Do not merely state what the rule provides or does or covers. Start by asking yourself who wanted the rule and exactly why they wanted it. You will usually be able to formulate the reason for the rule, but the reason must be a reasonable one and a good one and constitute necessity for the rule.
- You can state the reasonable necessity for each rule, have a number of statements (each covering two or more rules), or have one or more statements covering all the rules in general.
- Examples of reasonable necessity:
  - > The rule is mandated by the Legislature (the authority section says the agency "shall" adopt rules). A provision that the agency "may" adopt rules is not reasonable necessity for rules.
  - > The rule is needed to conform Montana law to federal law or to receive federal funds.
  - > The rule is needed to make Montana law uniform with that of other states.
  - > Rules regulating mirrors on school buses are necessary because investigation shows that

three recent school bus accidents were caused by faulty mirrors, improperly placed mirrors, not enough mirrors, or other problems with mirrors.

- > Rules are necessary to provide a procedure by which the public can apply for or receive something from the state government and to ensure due process.
- > A rule is being amended to delete a conflict with a statute.
- > Fees are changed to make them commensurate with costs, as required by statute.
- > The rule changes are needed to conform the rules to recent legislative enactments.
- > A majority of those affected by the rules agree that experience and studies by experts show the rules are necessary to protect the public safety and welfare.
- > Standards contained in the rules are being updated because they are obsolete or are no longer state-of-the-art.
- > The rules are needed to ensure fair competition and reduce unfair trade practices that have frequently occurred.
- > Documented instances of incompetent or substandard work show that rules are necessary to reduce such occurrences.



### Subsections (1) and (2) of 2-4-305

- The requirements of these self-explanatory provisions are often overlooked. Be sure you comply with these provisions.

### Adoptions by reference

- Covered in 2-4-307 and the Model Rules. Review this section and the Model Rules when you intend to adopt rules or standards by referring to them in the adopting rule and by stating that they are adopted and incorporated by reference.
- The rule cannot say that it adopts all future amendments to the rules or standards that are incorporated by reference. If you wish to adopt future amendments, you must do so specifically in a new rule amendment proposal notice that refers to the amendments adopted or to the amended version of the rules or standards that are incorporated by a reference to them.

### Time periods

- An adoption notice must be published in the MAR not less than 30 days or more than 6 months after the publication date of the proposal notice. See 2-4-302(2)(c) and (3), 2-4-305(7), and 2-4-306(4).
- At least 20 days' notice of a hearing must be given; the notice period begins on the date of publication of the notice in the MAR.

- At least 28 days from the date of publication of a proposal notice in the MAR must be allowed for interested persons to submit written material.

#### 1987 legislation

- SB 21 allows temporary rules to implement a statute enacted or amended with an effective date before October 1. The rules must be adopted before October 1 of the year of enactment or amendment of the statute. The rules may be adopted upon any abbreviated notice or hearing the agency finds practicable, but the adoption notice must not be filed until at least 30 days have passed since publication of the proposal notice. The rule is effective upon filing of the adoption notice and remains in effect until October 1. In the meantime, permanent rules on the subject can be adopted.
- HB 27 requires each department head to appoint an attorney, paralegal, or other qualified person in the department to review all the department's proposal, adoption, and other rule notices for compliance with MAPA.







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